



S. 3406--THE ADA AMENDMENTS ACT OF 2008

On July 31, 2008, the Senate version of The ADA Amendments Act of 2008 was introduced by Senators Harkin, Hatch, Kennedy (Chair of the Health, Education, Labor and Pensions Committee, HELP), Enzi (Ranking member of the HELP Committee), Obama, McCain and 51 additional colleagues (a total of 57 Senators). According to the chief sponsors of the bill, the overwhelming bipartisan support for the bill was the outcome of a coalition of civil rights, disability and employer communities that came together to help craft a bill that provides the proper balance between protections for people with disabilities and the obligations and requirements of employers and other covered entities.

The full list of Senator sponsoring the bill follows: Harkin, Hatch, Kennedy, Enzi, Specter, Obama, McCain, Dodd, Gregg, Clinton, Alexander, Johnson, Roberts, Kerry, Coleman, Feingold, Snowe, Leahy, Burr, Brown, Smith, Durbin, Murkowski, Lautenberg, Warner, Sanders, Brownback, Reed, Martinez, Mikulski, Isakson, Casey, Craig, Murray, Bennett, Landrieu, Collins, Biden, Allard, Nelson, Sununu, Cardin, Thune, Levin, Barrasso, McCaskill, Crapo, Schumer, Stevens, Salazar, Voinovich, Tester, Cochran, Reid, Luger, Chambliss, Dole.

The bill is similar to the bipartisan bill (H.R. 3195) that passed the House of Representatives on June 25, 2000 by a vote of 402-17. The Senate is expected to consider the bill when it returns from the summer recess. If the Senate passes the bill, it is expected that the House will approve the changes without further amendment (thus negating the need for a conference). President Bush is expected to sign the bill (no veto is expected).

The fundamental goal of the ADA is to ensure that individuals with disabilities are treated with dignity and respect and not denied opportunities based on discrimination, e.g., fear, ignorance, and stereotypes. Under the ADA an individual is protected against discrimination if he or she:

- Has a physical or mental impairment that substantially limits a major life activity,
- Had a record of such an impairment, or
- Is regarded as having such an impairment.

The bill is necessary to overturn Supreme Court decisions that inappropriately narrowed the definition of disability, resulting in the exclusion of many people with disabilities whom Congress intended to protect against discrimination. For example, these decisions created a “catch 22” under which many individuals with disabilities subjected to discrimination on the basis of disability (e.g., not hired or fired because of their disabilities) were denied their day in court to secure a remedy because they were deemed by the courts “not disabled enough” to qualify for protections under the ADA.

The ADA Amendments Act of 2008 will help re-establish these protections against discrimination on the basis of disability by reversing the Supreme Court’s narrow interpretation of the ADA and rejecting overly restrictive regulations issued by the Equal Employment Opportunity Commission (EEOC). In general, the Senate bill will make it easier for people with disabilities to be covered by the nondiscrimination protections of the ADA. The purpose of the bill is to convey that it is the intent of Congress that the primary object of attention in cases brought under the ADA should be whether entities covered under the ADA have complied with their obligations, and to convey that the question of whether an individual’s impairment is a disability under the ADA should not demand extensive analysis.

The bill includes the following key provisions:

- **Coverage**—The bill clarifies that Congress intended the ADA’s coverage to be broad, to cover anyone who faces unfair discrimination because of disability.
- **Substantially limits**—The bill retains the requirement that an individual’s impairment must substantially limit a major life activity but construes the term as follows:
 - The term should be construed in favor of broad coverage of individuals.
 - Congress rejects the standards enunciated by the Supreme Court that the term “substantially” needs to be interpreted “strictly to create a demanding standard” and rejects the conclusion that to be substantially limited in performing a major life activity an individual must have an impairment that “prevents or severely restricts” the individual from doing activities that are of central importance to most people’s daily lives.
 - The EEOC is expected to revise that portion of the current regulation that defines the term “substantially limits” as “significantly restricted” to be consistent with the ADA Amendments Act of 2008. Congress finds that the EEOC standard is inconsistent with congressional intent because it expresses too high a standard.

- The term “substantially limits” should be interpreted in the manner that courts and federal agencies interpreted the term under Section 504 of the Rehabilitation Act prior to the enactment of the ADA.
 - The Senate bill deletes the provision in the House bill defining “substantial limitation” as a “material” limitation.
- **Major life activity**—The Senate bill (just like the House bill) includes examples of major life activities e.g., standing, learning, thinking, communicating, and working. The bill also specifies that the term includes the operation of major bodily functions such as functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.
- **Protection for mitigating measures**—The Senate bill (just like the House bill) would overturn several court decisions to provide that people with disabilities will not lose their coverage under the ADA simply because their condition is treatable with medication or can be addressed with the help of accommodations and/or assistive technology.
- **Regarded as**—The Senate bill (just like the House bill) retains the “regarded as” prong of the definition but clarifies that an individual meets the requirements of being regarded as having such an impairment if the individual establishes that he or she has been subjected to an action prohibited under the ADA because of an actual or perceived physical or mental impairment, whether or not the impairment limits or is perceived to limit a major life activity. The Senate bill (like the House bill) also makes it clear that accommodations do not need to be made to someone who is disabled solely because he or she is “regarded as” having an impairment.